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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Jami Auerbach,

No. CV-23-00222-TUC-JGZ

10 Plaintiff,

ORDER

11 v.

12 Cincinnati Financial Group, et al.,

13 Defendants.

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15 On May 15, 2023, Plaintiff Jami Auerbach filed a pro se Complaint against
16 Cincinnati Financial Group and seven additional “affiliated” Defendants, alleging claims
17 for trespass and vandalism. (Doc. 1.) Plaintiff has also submitted an Application to Proceed
18 in District Court Without Prepaying Fees or Costs. (Doc. 2.)

19 **I. *In Forma Pauperis***

20 The Court may allow a plaintiff to proceed without prepayment of fees, or *in forma*
21 *pauperis*, when it is shown by affidavit that the plaintiff is “unable to pay such fees[.]” 28
22 § 1915(a)(1). Review of Plaintiff’s Application demonstrates that her modest living
23 expenses exceed her limited income. The Court will grant the Application.

24 **II. Statutory Screening of *In Forma Pauperis* Complaint**

25 In reviewing an *in forma pauperis* complaint, the court must dismiss the case if the
26 court determines that the action is frivolous or malicious, or fails to state a claim on which
27 relief may be granted. 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th
28 Cir. 2000) (en banc). District Courts apply the same standard when conducting statutory

1 screening and considering a Rule 12(b)(6) motion to dismiss. *Watison v. Carter*, 668 F.3d
 2 1108, 1112 (9th Cir. 2012). Thus, the complaint must contain “a short and plain statement
 3 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[A]
 4 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief
 5 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
 6 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible “when the
 7 plaintiff pleads factual content that allows the court to draw the reasonable inference that
 8 the defendant is liable for the misconduct alleged.” *Id.* The complaint must contain more
 9 than “a statement of facts that merely creates a suspicion [of] a legally cognizable right of
 10 action.” *Twombly*, 550 U.S. at 555. Further, “[t]hreadbare recitals of the elements of a cause
 11 of action, supported by mere conclusory statements, do not suffice.” *Id.* If the Court
 12 determines that a pleading could be cured by the allegation of other facts, a pro se litigant
 13 is entitled to an opportunity to amend a complaint before dismissal of the action. *See Lopez*,
 14 203 F.3d at 1127–29.

15 Additionally, the Court must have jurisdiction to hear the claims alleged in the
 16 complaint. Generally, this Court’s jurisdiction is limited to cases arising under federal law
 17 or cases involving parties who are citizens of different states and an amount in controversy
 18 exceeding \$75,000. *See* 28 U.S.C. §§ 1331, 1332. The United States Supreme Court has
 19 stated that a federal court must not disregard or evade the limits of its subject matter
 20 jurisdiction. *Owen Equip. & Erections Co. v. Kroger*, 437 U.S. 365, 374 (1978). Thus, a
 21 federal court is obligated to inquire into its subject matter jurisdiction in each case and to
 22 dismiss a case when subject matter jurisdiction is lacking. *See Valdez v. Allstate Ins. Co.*,
 23 372 F.3d 1115, 1116 (9th Cir. 2004); Fed. R. Civ. P. 12(h)(3).

24 **A. Complaint**

25 Plaintiff’s Complaint contains the following factual allegations:

26 I’ve had continuous unwanted/illegal entrances including key
 27 access once locks were changed. Companies are aiding &
 28 abetting those involved in my losses and my daughters losses.
 . . . I have been victimized in my sleep. Losses occur when we
 leave the homes. I am being given substances without my
 knowing[.] My opportunities for jobs & verified identity as a

1 living person/self right to be included. Vandalism to Porsche
 2 Cayenne 2006[.] . . . Losses to gift / recent Brooks Brothers
 3 leather jacket May of 2023[.] Losses to items tampered with
 (receipts) & stolen.

4 (Doc. 1 at 4.) As relief, Plaintiff seeks punitive damages, the “identity [of] parties entering
 5 my home where I have stated no entering,” and “communications restored to individual
 6 (self) current phone & past problems.” (*Id.* at 4–5.)

7 Plaintiff’s Complaint does not comply with Rule 8(a) and fails to state a claim upon
 8 which relief can be granted. Plaintiff does not specify which claims or causes of action she
 9 seeks to bring against the named defendants. The Complaint’s “Statement of Claim” is
 10 limited to allegations that unknown persons at unknown times have entered her property
 11 and caused unspecified losses. This is insufficient factual matter to state a claim to relief
 12 that is plausible on its face; it does not allow the Court to draw the inference that
 13 Defendants are liable for the alleged misconduct.

14 Further, Plaintiff has not alleged a federal claim over which the Court may exercise
 15 jurisdiction. Plaintiff asserts that a federal question is the basis for the Court’s jurisdiction.
 16 (Doc. 1 at 3.) The Complaint does not allege that Plaintiff’s claims arise under federal law
 17 or the United States Constitution; to the extent that her allegations may be construed as
 18 claims for invasion of privacy, trespass, or conversion, those causes of action arise under
 19 state law. Thus, there is no basis for the Court to exercise federal question jurisdiction here.
 20 Nor does Plaintiff’s Complaint provide a basis for the exercise of diversity jurisdiction,
 21 because it alleges that Plaintiff resides in Arizona and a number of the named defendants
 22 are residents of Arizona. Diversity jurisdiction under 28 U.S.C. § 1332(a)(1) requires
 23 “complete diversity” of citizenship, meaning that “the citizenship of each plaintiff is
 24 diverse from the citizenship of each defendant.” *Demarest v. HSBC Bank USA*, 920 F.3d
 25 1223, 1226 (9th Cir. 2019). Thus, the Court must dismiss Plaintiff’s Complaint.

26 **B. Dismissal without Leave to Amend**

27 When a district court screens an *in forma pauperis* complaint and determines that it
 28 fails to state a claim on which relief may be granted, the court must dismiss the complaint.

1 28 U.S.C. § 1915(e)(2). It is within the court's discretion to determine if dismissal with
2 prejudice or with leave to amend is appropriate. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th
3 Cir. 2000). Federal Rule of Civil Procedure 15(a) provides that leave to amend should be
4 freely granted "when justice so requires." Fed. R. Civ. P. 15(a)(2). A dismissal should not
5 be without leave to amend unless it is clear from the face of the complaint that the action
6 is frivolous and could not be amended to state a federal claim, or the district court lacks
7 subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d 1103, 1106
8 (9th Cir. 1995) (dismissed as frivolous); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir.
9 1990). Here, Plaintiff has failed to state a federal claim and it is clear from the face of the
10 Complaint that the Court lacks subject matter jurisdiction over this action. The addition of
11 facts would be unlikely to remedy this deficiency. The Court will deny leave to amend.

12 **III. Conclusion**

13 For the foregoing reasons,

14 **IT IS ORDERED:**

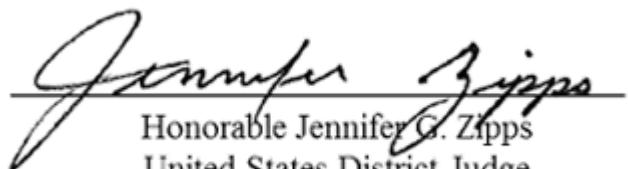
15 1. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs
16 (Doc. 2.) is **GRANTED**.

17 2. Plaintiff's Complaint (Doc. 1) is **DISMISSED with prejudice** and without leave to
18 amend.

19 3. The Clerk of Court is directed close the file in this action.

20 Dated this 12th day of June, 2023.

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Honorable Jennifer G. Zipts
United States District Judge